

Remarks

Claims 12-14 and 36-62 are pending in the application. In response to the Office Action of September 7, 2005, Applicant elects, with traverse, the claims of Group II comprising claims 36-45, drawn to a method for detecting antibodies against MNV-1, classified in class 424, subclass 130.1.

Applicant thanks Examiner Stacy Chen for her helpful remarks during a telephonic interview with the undersigned attorney on September 7, 2005. As noted by the Examiner in the interview and in the present paper, an initial Restriction Requirement mailed August 8, 2005 is vacated and is replaced by the present Restriction Requirement. Applicant notes that during the interview, the Examiner informed the undersigned attorney that a Petition to Make Special filed by the Applicant had been granted.

The present Amendment and Response to Restriction includes elected claims 36-45 (Group II) and withdrawn claims 12-14, 46-48, 57 and 59 (Group I), claims 49-50 and 54-56 (Group III), claims 51-53 (Group IV), claim 58 (Group V), and claims 60-62 (Group VI). Withdrawn claim 52-56 are also amended. The amendments are directed to correction of scrivener errors regarding dependency, and correction of claim text for proper antecedent basis of claim elements. These amendments add no new matter to the claims.

In the present Restriction Requirement, the PTO has restricted the claims to at least six groups. Applicant traverses the restriction for the following reasons.

For the PTO to issue a restriction between claims, the claims must be directed to inventions which are independent or distinct, and there must be a serious burden on the examiner. MPEP § 803.01. Applicant's responses to the specific restrictions are as follows.

- a) Applicant traverses the restriction between polypeptides of SEQ ID NO: 2-4 (presumably Group I), and primers SEQ ID NO: 15-20 (presumably Group VI), respectively, because the claims are not independent. As stated in the specification, at least on page 11, lines 19-21, the amino acid sequences are those of MNV-1 ORF's, and hence are related. Applicant, therefore, requests withdrawal of the restriction between the polypeptides, including the required election of one sequence for search and examination. In addition, the primers of sequences SEQ ID NO: 15-20 are all directed to MNV-1 ORF's, and hence are related. Applicant, therefore, requests withdrawal of the restriction between the primer sequences, including the required election of one pair of primers for search and examination.
- b) In the present Restriction Requirement, the PTO states that the polypeptides of Group I and the methods of Groups II-IV are related as product and process of use, but that the polypeptide can be used in a materially different method of use, such as inducing an immune response in a test animal or for epitope mapping. Without conceding the merits of restriction between Group I and Groups II-IV, Applicant requests rejoining the claims of Group III and Group IV, because the claims are not independent. In this case, the claims of Group III and Group IV are both drawn to methods of making an assay surface, and all depend from the same independent claim (claim 49). The PTO interprets the claims of Group IV as drawn to an assay surface "comprising cells which express polypeptide." However, applicant respectfully disagrees that the claims are drawn to an assay surface comprising cells which express polypeptides. Instead, the claims refer to expression of an MNV-1 polypeptide in cells, but do not recite that the assay surface comprises the cells. For example, the recitations of claim 51, include, without limitation, polypeptide expressed and secreted by cells, without a requirement that the assay

Application No. 10/757,832

surface comprise the cells. Accordingly, Applicant traverses the restriction, and requests rejoining of the claims of Group III and Group IV.

c) The PTO has restricted the claims of Group I and Group V. Applicant traverses this restriction, because the claims are not independent. The only claim of Group V, claim 58, depends from claim 57, which is assigned to Group I. Claim 57 is drawn to a kit for detecting seroconversion of MNV-1 and comprises an MNV-1 polypeptide immobilized on a solid surface. Because of its dependence from claim 57, claim 58 comprises a kit comprising an MNV-1 polypeptide immobilized on a solid surface, and reagents for detecting binding of the MNV-1 polypeptide with MNV-1 antibody if present in a sample. A person of ordinary skill in the art would recognize that a kit of claim 58 would include an MNV-1 polypeptide immobilized on a solid surface, and a reagent for detecting binding, such as, in non-limiting example, a peroxidase-conjugated goat anti-mouse IgG (H+L) serum, as described in the specification on page 19, lines 31-32. Accordingly, because claim 58 is not independent of claim 57, Applicant requests withdrawal of the restriction and rejoining of Group V with Group I.

d) In the restriction requirement, the PTO states that the polypeptide of Group I and the method of Group VI are unrelated. In order to hasten rapid consideration of the elected claims, Applicant, without prejudice or waiver, does not traverse this restriction in this paper.

e) In the restriction requirement, the PTO states that Groups II-IV are drawn to distinct methods of making use of polypeptides and antibodies. Applicant traverses this restriction for reasons presented supra regarding Groups III and IV, and because all of these claims relate, directly or indirectly, to detection of antibody against MNV-1, including methods and products. Because these products and methods are interrelated, it would not be a serious burden on the PTO to examine the claims together. Applicant, therefore, requests withdrawal of the restriction between these claims.

f) The restriction requirement further includes restriction between Groups II and V. In this restriction, the PTO states that "If the detecting method of Group II uses the product of Group V, then the product of Group [V] can be used in a materially different method, such as inducing an immune response in a test animal or epitope mapping." As discussed supra, the only claim of Group V, claim 58, recites a kit comprising an MNV-1 polypeptide immobilized on a solid surface, and reagents for detecting binding of the MNV-1 polypeptide with MNV-1 antibody if present in a sample. Applicant respectfully suggests that the PTO has not shown how the kit of claim 58 can be used to induce an immune response in a test animal or to map epitopes.

Accordingly, Applicant traverses the restriction and requests its withdrawal.

g) In the restriction requirement, the PTO states that Group II-V and Group VI are unrelated because the method of Group VI does not use the methods or products of Groups II-V. In order to hasten rapid consideration of the elected claims, Applicant, without prejudice or waiver, does not traverse this restriction in this paper.

h). In the restriction requirement, the PTO states that Groups III and V may be related as product and process of using. However, the PTO restricts these groups because "If the detecting method of Group III uses the product of Group V, then the product of Group [V] can be used in a materially different method, such as inducing an immune response in a test animal or epitope mapping." As discussed supra, the only claim of Group V, claim 58, recites a kit comprising an MNV-1 polypeptide immobilized on a solid surface, and reagents for detecting binding of the MNV-1 polypeptide with MNV-1 antibody if present in a sample. As discussed supra in view of the restriction between Groups II and V, Applicant respectfully suggests that the PTO has not shown how the kit of claim 58 can be used to induce an immune response in a test animal or to map epitopes. Accordingly, Applicant traverses the restriction and requests its withdrawal.

i). The PTO has restricted Groups IV and V as unrelated because "the method of Group IV does not require a reagent of Group V." In order to hasten rapid consideration of the claims of Group II, Applicant, without prejudice, does not traverse this restriction in this paper.

Applicant acknowledges that the Examiner has required restriction between product and process claims, that allowance of product claims would lead to rejoinder of process claims that depend from or otherwise include all the limitations of the allowed product claims, and that process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.

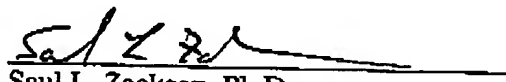
Conclusion

As it is believed the application is in a condition for allowance, Applicant requests prompt and favorable action.

Applicant requests that the Examiner contact the undersigned attorney by telephone if a discussion would be of benefit toward gaining a rapid allowance of the claims.

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Respectfully submitted,


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